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5 Attorney for Plaintiffs
 6 United States of America and AAA
 Restaurant Fire Protection Services, Inc.

7

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, for the) Case No.: C07-5912 WDB
 11 use of AAA RESTAURANT FIRE)
 12 CONTROL, INC., doing business as AAA) **ANSWER TO COUNTERCLAIM OF**
 FIRE PROTECTION SERVICES; and AAA)
 RESTAURANT FIRE CONTROL, INC.,) **YERBA BUENA ENGINEERING**
) **AND CONSTRUCTION, INC.**

13 Plaintiffs,)

14 vs.)

15 YERBA BUENA ENGINEERING &)
 16 CONSTRUCTION, INC., a California)
 corporation; TRAVELERS CASUALTY)
 17 AND SURETY COMPANY OF AMERICA,)
 a Connecticut corporation; and)
 18 DOES 1 TO 100, inclusive,)

19 Defendants.)

20 AND RELATED COUNTERCLAIM)

21 Plaintiff and Counterdefendant AAA RESTAURANT FIRE CONTROL, INC.,
 22 doing business as AAA FIRE PROTECTION SERVICES (“AAA”), answers the Counterclaim

23
 24 ANSWER TO COUNTERCLAIM OF YERBA BUENA ENGINEERING AND CONSTRUCTION, INC.

1 of defendant and counterclaimant YERBA BUENA ENGINEERING & CONSTRUCTION,
2 INC. ("Yerba Buena") as follows:

3 1. AAA lacks information or belief sufficient to admit or deny the allegations
4 of paragraph 1 of the Counterclaim and on that basis, denies those allegations.

5 2. AAA admits the allegations of paragraph 2 of the Counterclaim.

6 3. AAA admits the allegations of paragraph 3 of the Counterclaim.

7 4. AAA admits the allegations of paragraph 4 of the Counterclaim.

8 5. AAA admits that the Subcontract incorporates by reference various other
9 documents and drawings and that such documents and drawings are voluminous, but lacks
10 sufficient information or belief to admit or deny that the materials that paragraph 5 of the
11 Counterclaim purports to incorporate are part of the Subcontract and on that basis, denies that
12 such documents and drawings are contained in the Subcontract.

13 **FIRST CAUSE OF ACTION**

14 6. In response to paragraph 6 of the Counterclaim, AAA incorporates here by
15 reference AAA's responses set forth in paragraphs 1 through 5, inclusive, of this Answer To
16 Counterclaim.

17 7. AAA denies the allegations contained in paragraph 7 of the Counterclaim.

18 8. AAA denies the allegations contained in paragraph 8 of the Counterclaim,
19 and specifically denies that Yerba Buena has been damaged in any manner or amount at all as a
20 consequence of acts or omissions of AAA.

21 9. AAA denies the allegations contained in paragraph 9 of the Counterclaim.

22 10. AAA admits the allegations contained in paragraph 10 of the
23 Counterclaim.

11. AA denies that any attorneys fees and other expenses in this proceeding arise from any act or omission of AAA. Except as so denied, AAA lacks information or belief sufficient to admit or deny the allegations of paragraph 11 of the Counterclaim and on that basis, denies those allegations.

SECOND CAUSE OF ACTION

12. In response to paragraph 12 of the Counterclaim, AAA incorporates here by reference AAA's responses set forth in paragraphs 1 through 11, inclusive, of this Answer To Counterclaim.

13. AAA denies the allegations of paragraph 13 of the Counterclaim.

14. AAA denies the allegations of paragraph 14 of the Counterclaim.

15. AAA denies the allegations contained in paragraph 15 of the Counterclaim, and specifically denies that Yerba Buena has been damaged in any manner or amount at all as a consequence of acts or omissions of AAA.

AFFIRMATIVE DEFENSES

16. The Counterclaim fails to state a claim upon which relief may be granted.

17. Yerba Buena's own negligence, and that of its employees, agents and subcontractors other than AAA, contributed to the damages alleged in the Counterclaim.

18. The Counterclaim is barred by Yerba Buena's laches.

19. Yerba Buena is estopped by Yerba Buena's own acts and omissions from recovery on the counterclaim.

20. Yerba Buena's damages, if any, were caused in part or in whole by persons and entities other than AAA.

1 21. The Counterclaim is barred by the provisions of Section 337, subdivision
2; Section 338, subdivisions (b) and (c); and Section 339, subdivision 1, of the California Code
3 of Civil Procedure.

4 22. Yerba Buena failed to mitigate its damages alleged in the Counterclaim.

5 23. Yerba Beuna failed to fulfill or cause the fulfillment of conditions
6 precedent or concurrent to performance by AAA.

7 WHEREFORE, plaintiff AAA requests judgment be entered denying Yerba Buena any
8 recovery on its Counterclaim and awarding AAA its attorneys fees and costs of suit.

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10 Dated:

11 _____
12 Lawrence E. Smith
13 Attorney for United States Of America, for the use of AAA
14 Restaurant Fire Control, Inc., and AAA Restaurant Fire
15 Control, Inc.
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